IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

OP.No. 1172 of 1998(M)

PETITIONER:

M/S.GRASIM INDUSTRIES LIMITED,
PULP DIVISION, BIRLAKOOTAM,
MAVOOR 673 661, KOZHIKODE,
REPRESENTED BY ITS PRESIDENT
SRI.R.N.SABOO.

BY ADV. SRI.A.K.JAYASANKER NAMBIAR.

RESPONDENTS:

1.STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVT.SECRETARIAT, THIRUVANANANTHAPURAM.

2.COMMISSIONER AND SECRETARY TO GOVT.,
HOME (A) DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANANTHAPURAM.

3.DIRECTOR GENERAL OF POLICE, POLICE
HEADQUARTERS, THIRUVANANTHAPURAM.

4.COMMISSIONER OF POLICE, KOZHIKODE.

BY GOVT.PLEADER SRI.K.V.MANOJKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P.NO.2073/98 IN O.P.NO.1172/98

DISMISSED

30.11.2007. SD/- KURIAN JOSEPH, JUDGE.

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF LETTER DT. 24.6.1995 FROM THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P2 : TRUE COPY OF LETTER DT. 7.7.1985 FROM THE PETITIONER TO THE DIST.COLLECTOR.

EXT.P3 : TRUE COPY OF LETTER DT. 10.11.1988 FROM THE PETITIONER TO THE HON'BLE CHIEF MINISTER, GOVT. OF KERALA.

EXT.P4 : TRUE COPY OF LETTER DT. 6.6.1989 FROM THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P4A TRUE COPY OF THE BILL OF COST TOWARDS POLICE PROTECTION PROVIDED TO THE PETITIONER DURING THE PERIOD FROM 7.7.1985 TO 10.11.1988.

EXT.P5 TRUE COPY OF THE LETTER DT. 10.7.1989 FROM THE PETITIONER TO THE THIRD RESPONDENT.

EXT.P6 TRUE COPY OF THE LETTER DT. 27.10.1989 ISSUED BY THE THIRD RESPONDENT TO THE PETITITONER.

EXT.P7 TRUE COPY OF THE LETTER DT. 16.11.1989 FROM THE PETITIONER TO THE HON'BLE CHIEF MINISTER OF KERALA.

EXT.P8 TRUE COPY OF THE LETTER DT. 20.6.1991 FROM THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P9 TRUE COPY OF THE LETTER DT. 2.8.1991 FROM THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P10 TRUE COPY OF THE LETTER DT. 12.8.1991 FROM THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P11 TRUE COPY OF THE LETTER DT. 29.1.1992 FROM THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P12 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 4TH RESPONDENT IN O.P.11100/92.

EXT.P13 TRUE COPY OF THE JUDGMENT DT. 14.1.1997 IN O.P.NO.11000/92 OF THE HON'BLE HIGH COURT OF KERALA.

EXT.14 TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER BEFORE THE ADDL.CHIEF SECRETARY.

EXT.P15 TRUE COPY OF THE ORDER DT. 8.12.1997 ISSUED BY THE ADDL.CHIEF SECRETARY.

EXT.P16 TRUE COPY OF THE LETTER DT. 31.12.1997 FROM THE THIRD RESPONDENT TO THE PETITIONER.

KURIAN JOSEPH, J.

O.P.NO.1172 OF 1998

Dated 30th November, 2007.

J U D G M E N T

Ext.P15 order passed by the Government imposing costs for the police protection rendered to the petitioner Company from 7.7.1985 to 10.11.1988, is under challenge. The petitioner Company was before this court on an earlier occasion, leading to Ext.P13 judgment. The vehement contention advanced by the learned counsel appearing for the petitioner is that despite the specific direction issued by this court, the Government has not considered those aspects. Reference is invited to the observation in Ext.P13 judgment regarding the alleged laches/lapses on the part of the police in safeguarding the property of the petitioner Company from theft and loss and the direction to the Government to consider those aspects. In compliance with the direction, Ext.P15 order was passed by the Government. It is the admitted case of the parties that there was police protection to the company, and the factory was under the custody of the police from 7.7.1985 to 10.11.1988. Adverting to

the contentions, it is stated by the Government in the impugned order as follows :-

> "The connected records were examined. These records show that protection was given for a continuous period from 7.7.85 when there was no law and order situation as such. The policemen were performing guard duty to protect the properties of the Company. There were instances of theft in the factory during the period; but this was due to the fact that the factory premises are spread over a large area of around 200 acres, on one side of which is the Chaliyar river. The police had arranged boat patrolling. Such thefts had taken place even during the period when the Company's own guards were on duty.
>
> The contention of the Company that the police were merely performing law and order duties cannot be accepted. During the strike period the Company requested the police authorities to provide policemen for guard duty. It cannot be said that there was law and order situation for a continuous period of three years from 7.7.1985. Obviously the police protection was given, by way of guarding the properties of the Company."

If as a matter of fact, despite the protection and guard thus rendered by the Government, owing to laches, lapses or inaction on the part of the police, any loss occurred by way of theft or otherwise to the property of the Company, that is an independent cause of action for the Company to pursue and establish with reference to materials, facts and figures, in appropriate proceedings. It will also be open to the Company to pursue their grievance independently before the Government. But such liberty

is no answer to avoid or delay payment of police protection expenses already quantified and ordered. If the Company chooses to represent the matter before the Government as above, it will also be open to the Company to appraise the Government that the amount as demanded in Ext.P15 is excessive, since additional police force were not deputed. Without prejudice to the liberty as above to the Company either to pursue the matter before the Government or before the civil court, this writ petition is dismissed. It is however clarified that in the event of the Company approaching the civil court, the time taken for prosecuting the Original Petition leading to Ext.P13 judgment and the resultant Ext.P15 order as well as the Original Petition leading to this judgment shall be excluded in computing the period of limitation.

KURIAN JOSEPH, JUDGE.

tgs

KURIAN JOSEPH, J

O.P.NO.1172 OF 1998 M

J U D G M E N T

Dated 30th November, 2007.